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Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 7,
Article 98, Section 4999 of the General Industry Safety Orders

Properly Rigged (Handling Loads)

SUMMARY

This staff-initiated rulemaking proposal is the result of an Occupational Safety and Health Appeals Board (OSHAB) Decision in the Matter of Modern Stainless Design, Inc., Docket Nos. 01-R1D5-3834 and 3835. The employer was cited by the Division of Occupational Safety and Health (Division) for failing to properly rig a 4,320 pound steel tank suspended by 4 overhead cranes. The load released suddenly, dropped and came in contact with an employee who was aligning tank sections and seriously injured him. The Division alleged the tank had been “improperly and unsafely rigged.” OSHAB hearing testimony indicates employer difficulty in discerning when a load has been properly rigged. The Appeals Board Decision (Decision) also states that the Division had created an interpretation of Section 4999(b)(1) that is stricter than what is contained in the text of that section imposing several rigging requirements not contained in the cited safety order. The Decision indicated that the employer had not trained the employee who was injured in rigging procedures and could not produce any training records.

Board staff believes that to prevent accidents like the one described above, Section 4999 must be very clear about requiring that loads be rigged only by persons trained and competent to do so. In the absence of specific training or competency requirements, the proposal requires a qualified person, as defined in the General Industry Safety Orders (GISO),¹ to be trained to safely perform rigging operations. Board staff notes there are national consensus standards that address this issue such as the American National Standards Institute (ANSI) A10.42-2000, Safety Requirements for Rigging Qualifications and Responsibilities - American National Standard for Construction and Demolition Operations that could provide employer guidance.

¹ A “qualified person, attendant, or operator” is defined in the GISO as an employer-designated person who by reason of his/her training and experience has demonstrated the ability to safely perform duties and where required, is licensed in accordance with federal, state, or local laws and regulations.

This proposed rulemaking action also includes non-substantive revisions such as editorial, grammatical, and re-formatting. These non-substantive revisions are not all discussed in this Initial Statement of Reasons but are clearly indicated in the regulatory text in underline and strikeout format. In addition to these non-substantive revisions, the following actions are proposed:

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 4999. Handling Loads.

This section prohibits cranes, derricks or hoists from being loaded beyond their rated capacity and addresses the responsibility of qualified persons to determine the magnitude of the load, except for cases where the crane or derrick is equipped with a load weighing device. This section also prohibits crane operators from lifting loads of unknown weight unless a qualified person informs the operator of the weight prior to the lift. Section 4999 also addresses procedures for attaching the load, pre-lift procedures, procedures during the hoisting process, side loading, releasing and holding loads, preventing inadvertent contact of employees by the moving parts of cranes and lifting loads using a truck crane.

A new subsection (a) is proposed that requires the qualified person (rigger) to be trained and capable of safely rigging loads and that loads are to be rigged by a qualified person (rigger) or a trainee under the direct supervision of a qualified person (rigger).

The proposed amendments are necessary to clarify to the employer that within the context of Section 4999, the term “qualified person” is referring to the “rigger” and that the qualified person (rigger) or trainee under a qualified person’s (rigger’s) supervision are the only persons who can rig loads and that the qualified person (rigger) must be specifically trained and be able to conduct rigging operations safely.

Amendments are proposed to re-numbered subsection (b) to include the term “(rigger)” after the phrase “qualified person” in two different locations in subsection (b). The proposed amendments clarify that the term “qualified person” is a “rigger”. This proposal will be consistent with language proposed in new subsection (a) and specifies that the rigger is a person who by virtue of training is capable of safely performing rigging operations.

Amendments are proposed to re-number subsection (c)(1) to delete the term “properly” and to specify that when required by GISO, Section 5002, the hook latch or gate be in the closed position to prevent hook displacement. These proposed amendments are necessary to eliminate vague and ambiguous terminology to improve clarity and to ensure that the load is handled securely when being lifted.

An informative “NOTE” is proposed to follow re-numbered subsection (c)(1) to clarify that there are rigging requirements discussed in the Construction Safety Orders, Section 1710, that pertain to the erection of structures and that signaling requirements are located in Section 5001.

Re-numbered subsection (c)(2) requires slings to be free of kinks or twists. An additional provision is proposed to follow the existing requirement which refers the employer to the sling requirements in Article 101 to further ensure rigging devices such as slings are used properly and are effective in securing the load.

Re-numbered subsection (d) is proposed to include new subsection (d)(4) to prohibit the practice of side loading crane booms with the exception of what is permitted in re-numbered subsection (g). This proposal will allow side loading only as permitted in re-numbered subsection (g) and is necessary to reduce the possibility the load could become unstable and come in contact with persons on the ground resulting in serious injury or fatality.

Amendments are proposed to re-numbered subsection (h) pertaining to loads from being released or detached from a crane. The proposed amendments would specify that the load shall not be released or detached from the crane unless a qualified person (rigger) indicates that it is safe to do so. The proposed amendments are necessary to clarify that the term “person” must be a “qualified person (rigger) which will ensure that only trained, and therefore, competent employees will handle and rig loads safely to ensure safe load handling and employee safety.

All of the foregoing proposed amendments add to the clarity of the standard and enhance employee safety.

DOCUMENTS RELIED UPON

1. OSHAB Decision in the Matter of Modern Stainless Designs, Inc., Dockets 01-R1D5-3834 and 3835.
2. American National Standards Institute, ANSI A10.42-2000, Safety Requirements for Rigging Qualifications and Responsibilities-American National Standard for Construction and Demolition Operations.
3. American Petroleum Institute (API) Recommended Practice 2D, Fifth Edition, June 2003, Operation and Maintenance of Offshore Cranes.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed regulations do not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which

the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.